

PROPERTY

Final Examination

Professor Scott Altman

December 5, 2017

Part II: 100 Minutes (One Hour and Forty Minutes)

OPEN BOOK

After the questions and answer sheets for Part I are collected, the proctor will distribute Part II, which includes three pages in addition to this cover page. Part II consists of a single essay question, with two sub-parts, each containing several disputes. For each dispute, you should identify important issues, make reasonable arguments on either side of any open question of fact or law, and state clearly how resolution of these issues will affect the outcome. Reasonable arguments are those that might be made in a trial court.

You will have 100 minutes to complete Part II, which will count for 60% of your exam grade.

If you are writing, please write in ink on every other line and on one side of each page. Please take care to write legibly.

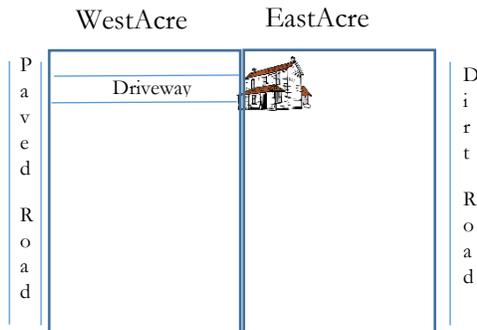
Good luck on the exam.

YOU MUST STOP WRITING WHEN INSTRUCTED TO DO SO BY THE PROCTOR. FAILURE TO DO SO WILL BE CONSIDERED A BREACH OF ACADEMIC DUTY AND WILL BE REPORTED TO THE DEAN'S OFFICE BY THE PROCTOR.

DO NOT LIFT THIS COVER SHEET UNTIL INSTRUCTED TO DO SO BY THE PROCTOR

Part II

Sam Sellers owns two adjacent farms (each 500 acres): EastAcre and (immediately to the west) WestAcre. There is only one (very old) farmhouse for the two farms, located on the north-west corner of EastAcre. A driveway connects the farmhouse on EastAcre to a paved road to the west by traversing WestAcre. To the north and south of these farms are other large farms. To the east of EastAcre is a dirt road. It connects to other paved roads, but not for five bumpy miles. The dirt road often floods during the rainy season. A not-to-scale drawing is below.



Sam suspects that there are valuable assets beneath EastAcre (such as oil, gas, or coal). But he no longer wishes to be a farmer. So in January 2016, he sells the farmhouse and the surface rights to EastAcre to Bo Byers. The deed of sale explicitly states that Sam retains for himself ownership over all minerals, oil, and gas beneath EastAcre. The deed also grants to Bo a permanent easement across WestAcre in the location of the current driveway, to be used for passenger and farm vehicles. The deed mentions no other easements. Bo does not use the farm or the farmhouse in any way during the winter of 2016.

In February, 2016, Sam sells WestAcre (using a general warranty deed) to Donald D. Velop, who plans to use this land as a magnificent golf course and private club. The deed, which asserts that there are no encumbrances on WestAcre, is immediately recorded. The deed selling EastAcre (and an easement) to Bo was not recorded until March 2016. Donald was not told about Sam's sale to Bo or about Bo's easement.

In April 2016, Bo arrives at the WestAcre driveway with a car and some farm equipment. He plans to move into the EastAcre farmhouse and begin farming. Donald sees Bo and blocks his access, claiming that Bo has no right to enter Donald's land and that farm machinery has no place near his future golf course. Bo talks with Donald for a short time. He then makes a vulgar remark and tells Donald to sue him as he drives down the driveway with the car and farm equipment. The next day, Sam arrives at EastAcre with some heavy equipment (via the dirt road to the east). He tells Bo that he is planning to start a mining operation on the far southern part of the EastAcre. Bo tells him to get off his land, again offering the same vulgar remark.

1. **You are Bo's lawyer. He wants to have access to EastAcre for both farm and passenger vehicles via the WestAcre driveway. He also wants to prevent Sam from entering EastAcre. If Bo wins his lawsuit against Donald, can Donald sue Sam for damages? Explain what issues will arise in resolving these disputes and what arguments each side will make.**

You might like to know the following facts: The dirt road to the east of EastAcre can be used year-round by trucks and tractors. It is not safe for passenger cars after heavy rains, which can be up to fifteen weeks per year. The mining operations that Sam has in mind will occupy several acres of the farm and will produce some noise and smoke. These operations are allowed under local zoning rules.

Assume now that the above disputes have settled. Bo and Donald have agreed that Bo can cross WestAcre; Bo has agreed that Sam can occupy three acres on the south end of EastAcre for mining operations.

Bo has decided that he does not want to operate the farm himself. So on January 1, 2017, he signs an agreement to lease the farmhouse and all 500 acres of EastAcre to Tina T. Enant. Tina agrees to pay Bo \$12,000 per year (paid monthly) as rent for the house, plus 30% of every dollar earned from selling crops (paid annually) as rent for the land. The lease agreement provides that Bo can occupy the downstairs bedroom of the farmhouse. No end date is specified in the lease. The lease states that Tina may not sublease or assign the house or the farm without explicit consent from the landlord.

Shortly after Tina moves into the house, the season's first big rainstorm arrives. With it comes the unpleasant surprise that the farmhouse roof has a terrible leak. Water pours through the roof into all of the rooms on the second floor. Tina moves her things into the first-floor living room and tells Bo that she does not plan to pay any rent until the leaks are fixed. Bo repeats his usual vulgar remark and tells Tina "fix the roof yourself. Farmers are supposed to know how to fix things." The next day, Tina climbs onto the roof to see if she can actually fix it. Due to the slippery conditions, she falls and breaks both of her arms, making it impossible for her to operate a tractor or do other farm labor. For the remainder of the winter, Tina lives in the first-floor living room and pays no rent. In May, Bo hires workers, who repair the roof and all the rain damage done upstairs. Shortly thereafter, Tina moves upstairs and resumes paying rent (though she does not pay any back rent for the months she lived downstairs).

Tina explains to Bo that she will be unable to cultivate crops this season. She proposes to sublease the farm (though not the farmhouse) to her brother Lew T. Enant, who (unlike Tina) is not an experienced farmer. Bo says that he will only accept this proposal if Tina agrees to pay Bo 40% of every dollar earned. Seeing no alternative, Tina agrees. The sublease agreement transfers the 500 acre farm from Tina to Lew between May 15 and October 15th.

2. **You are still Bo's lawyer. By the fall, Lew has harvested and sold a crop – though it was not especially valuable. Lew refuses to pay Bo any rent. He complained all summer that he was not allowed access to the entire farm – several acres were off limits to him because of the ongoing mining operation. If he must pay something, Lew claims that he should owe Bo less money because Bo did not provide him access to the entire farm. He also claims that he should only have to pay 30% of the proceeds (less something for the acres lost to the mine) because the demand for 40% was unlawful. Bo disagrees. He wants to collect all of the farm rent from Lew. If Lew will not pay, Bo wants to collect the farm rent from Tina. Bo also wants to collect from Tina back rent for the winter months when Tina was not paying. Recently (September 2017) Tina told Bo that she does not plan to remain on the farm, or in the farmhouse, past December. Bo believes that Tina is obligated to pay rent for another year.**

Bo also wants to sue Sam for failing to disclose the leaking roof. Bo personally did an inspection of the farmhouse before buying, though he has no particular skills as an inspector. Bo asked Sam whether there were any major problems with the house. Sam said “well, it is an old house. Some leaks and creaks. But nothing unusual for a house this age.” There are no statutory duties to disclose specific physical defects in this state. Before selling the house to Bo, Sam painted the interior and installed new carpet upstairs. The floors downstairs are all hardwood.

For both the disputes with Tina and Lew and the dispute with Sam, explain what issues will arise and what arguments each side will make.